

Senate Bill 183  
February 19, 2009  
Presented by Chris Smith  
Senate Fish and Game Committee

Mr. Chairman and committee members, for the record I am Chris Smith, Deputy Director of Montana Department of Fish, Wildlife & Parks (FWP).

FWP understands the anger and frustration that underlies SB 183. The people of Montana have worked hard to develop and implement a responsible conservation and management plan that provides a secure place for wolves on the landscape of our state and also protects the safety and property rights essential to our citizens. The wolf population in Montana now exceeds 500 and provides the needed biological and genetic link between the three subpopulations in the Northern Rockies. We have done everything required of us by federal law and joined litigation challenging decisions by the U. S. Fish and Wildlife Service (USFWS). Still, we are waiting for delisting and the ability to manage wolves like other species in Montana.

In addition to doing all that we can to achieve and sustain delisting, FWP has taken on responsibility for managing wolves in the state to the greatest extent we can. We have fielded staff in five locations across western Montana to monitor populations, respond to producers' calls and direct the efforts of Wildlife Services to remove wolves as necessary to minimize losses, within the constraints of the Endangered Species Act (ESA). These individuals work long hours for modest wages because they are committed to serving the people of Montana and implementing the people's wolf management plan.

As tempting as it is at some times to "rage against the machine," SB 183 ultimately would set back, not promote, delisting. For the following reasons, FWP must recommend that the committee table SB 183.

First, a number of the proposed legislative findings in Section 2 of the bill are inaccurate and the challenge to federal authority in Section 4 is fruitless. The assertion that the United States' lacks authority to restore wolves in Montana, or to protect wolves under the authority of the ESA, has been litigated in federal court. The State of Idaho and the Farm Bureau sued to block the reintroduction of wolves to the Northern Rockies. The federal court ruled that the USFWS did have the authority to reintroduce wolves and protect them under the ESA. The finding that there is no commerce in wolves among the states ignores the inter-state and international trade in wolf hides, not to mention the interstate commerce related to wolf tourism in and around Yellowstone National Park. Similarly, the assertion that the United States is responsible for injuries caused by "federally released wolves" ignores the sovereign immunity of the federal government. Numerous similar cases challenging federal authority under the ESA have been decided in favor of the federal government. Placing demonstrably groundless statements in statute and promoting frivolous litigation is bad policy.

Section 3 of the bill appears largely redundant. The purposes for SB 183 are already codified in statute at 87-1-217, MCA, which this committee amended earlier this session in SB 228.

Section 5 voids the current state wolf management plan. Montana's wolf plan is the product of extensive public involvement and is widely hailed as a model document that balances the diverse interests and values in Montana. More importantly, the plan represents the regulatory mechanisms that are essential for successful delisting. While we are all weary of the delays in delisting, and apprehensive about the effect of the recent change in administrations in Washington, D.C., voiding Montana's plan is one absolutely certain way to assure delisting does not occur.

Section 6 of the bill voids the cooperative agreements between FWP and USFWS and with USDA Wildlife Services and Sections 7 and 8 create a cumbersome process and unattainable conditions that must be met before any new cooperative agreements can be signed. The effect of these changes would be elimination of the field staff that are currently Montana's "front line" for gathering the data needed to support delisting and respond to wolf depredation on livestock, and cut off \$110,000 that FWP provides to Wildlife Services to investigate wolf depredation on livestock. Voiding these agreements would leave Montana's livestock producers with far less support in the face of growing wolf numbers.

Section 9 of the bill removes state protection for wolves, but that is largely meaningless, because the protections of the ESA would remain in effect. Those protections, which provide a more serious penalty than state law would after delisting, would be in effect forever, if SB 183 becomes law.

Section 10 establishes requirements on the presence of wolves in Montana that are unrealistic or simply unattainable. For example, there is no way the state veterinarian could determine that wolves in the state are not carrying diseases or parasites transmissible to humans.

Section 11 attempts to restrict, and to impose a criminal penalty on, anyone who enforces the protections of the ESA. Again, federal law would trump this provision, rendering it meaningless.

As drafted, Section 12 requires FWP to pay for the legal defense of anyone charged with a violation of the ESA. This would be a clear diversion of license funds and would render FWP ineligible to receive Pittman-Robertson and Wallop-Breaux funding of about \$18 million per year that sustains many of our core fish and wildlife programs. With the proposed amendment, the diversion issue would be resolved, but the department of justice will likely still have concerns about this provision.

As drafted Section 14 requires that any numbers used to make decisions related to wolf management are accurate within a 10% confidence limit, as certified by the legislative auditor. Given the nature of wildlife management and wildlife data collection, very few estimates used in decision-making have that level of precision. This provision would make wolf management incredibly and unnecessarily expensive. As amended, this section would require that the legislative auditor find FWP's methods "reasonable." While we do not doubt that we can easily meet that requirement, this adds another layer of bureaucracy to management with little value added.

Section 15 attempts to direct the actions of the Attorney General (AG), ignoring the fact that the AG does not serve at the direction of the legislature and that the AG has declined previous legislative "direction" to sue the federal government. This section goes on to allow a private party to file a lawsuit at the department's expense, which would be another diversion of license money, unless amended as proposed. Still, FWP questions whether this is a waste of money on frivolous litigation.

Section 16 of the bill ascribes civil and/or criminal liability to a vast and, frankly, unidentifiable class of people, without making clear who may have standing to bring a civil case.

Section 17 grants broad authority to the county commissioners to determine whether or not the terms of SB 183 are met, presumes that any wolf that attacks a person is rabid and authorizes the killing of any and all wolves within 100 miles of the attack until the county commissioners determine that all surviving wolves are free of rabies. However, the bill does not specify how the county commissioners are to make such a determination.

Section 21 of the bill amends the state Nongame and Endangered Species Conservation Act to exempt the wolf from the provisions of that act to exclude wolves from the provisions of the law. This not only sets wolves apart from the other 681 vertebrate species in Montana, it appears to conflict with Section 23 which directs FWP to manage wolves as a nongame species in need of management.

The proposed amendments to Section 27, making SB 183 effective only if a final rule to delist wolves is not published in time to become effective within 30 days of passage and approval, or in the event that a court orders the gray wolf to be placed back on the list of endangered species unnecessarily limits the state's chances of achieving the goal of delisting. FWP cannot control when, or if, the new administration will decide to publish the final rule drafted at the end of the Bush administration. FWP cannot assure this committee that, if that rule, or some other rule delisting wolves is published that the rule will be upheld in court. I can assure you, though, that if the rule is not published or if a court overturns the rule once again and SB 183 took effect, FWP's options to pursue delisting would be definitively foreclosed. In essence, SB 183 gives us one chance, and only one chance, to achieve delisting and leaves the outcome totally out of FWP's hands. That's not a good risk to take.

Mr. Chairman and members of the committee, SB 183 contains flawed reasoning, sets Montana up for failure and would assure that delisting is not an option. FWP is as eager as any, and has put forth considerably more energy and expense than most, to achieve delisting of wolves. FWP urges the committee to table SB 183 and allow us to continue to manage wolves as best we can pending delisting, and to continue our efforts to achieve that goal.